

GENERATIONAL WEALTH BUILDING - PART II

Written by Madame JFK Attorney-At-Law

In GENERATIONAL WEALTH BUILDING - PART I, I presented a discussion of the importance of having at least a Basic Estate Plan from the African American cultural perspective. Readers were encouraged to avoid the high costs, time-consuming nature of the probate process; the resulting family disputes and devastation that often occurs in the absence of an estate plan, and to provide incentives and guidance to heirs (see full article at: www.meenanewspaper.com, November 2006 issue, pgs. 3-4, 8). In Part II, we'll explore some of the pitfalls I've observed in my generational wealth practice when people use alternative estate planning



measures.

I'll preface my comments by stating, African American people are some creative folk. Our experiences often mirror those confronted by members of the Hispanic, Asian, Rural and low to moderate income households in general. As citizens of the United States of America, we as a people have been acutely aware through-

out our history that "everything is not for everybody." I'm taking creative license to place that saying within the context of the law. It has been our historical experience and reality that all laws, protections and opportunities granted to the citizens of the U.S. have not always been available to us ...without a fight. Living this reality has made us a resourceful people, creating for ourselves that which we have been unable to obtain from the legal, financial and educational systems in the U.S. I commend this creative spirit.

In the area of Trust and Estate Planning our creativity has manifested itself in a parallel social system which seeks to produce the same results as an estate plan without the services of an attorney or the

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courts. However, this system often has unintended consequences which frustrate our original intentions. Perhaps you'll find yourself somewhere in the following examples of Homemade Inheritance, Poor Man's Probate, and Low Cost Non-Professional Legal Services.

I. HOMEMADE INHERITANCE

Children

People often place children on title to real property to resolve potential inheritance issues. This poses a problem for future property transactions such as a refinance loan, remodeling or sale because when you place a minor child on title, that child will require a guardian to accede to any property transaction. Parents often assume that they act as the child's Guardian, however, the child's parent cannot also serve as the Guardian—one will be appointed by the court in a legal guardianship proceeding. This involves the unanticipated expense of time and money. Additionally, the transaction must be within the best interest of the child. Despite our plans, it is not always within the child's best interest to give the property back to the parent or to

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fund the parent's endeavors.

With respect to adult children, their creditors may place a lien on the real property that you gave them legal title to by 'placing their name on the deed'. Yes, putting property in the name of a child, relative or friend actually passes legal title of the property to that person.

Capital Gains

Early deeding can result in a missed opportunity for the child or heir, to receive a "stepped-up basis" or the equivalent of the higher fair market value at date of death of the parent upon transfer of title through inheritance. Instead the

child receiving early deeding must be bound by the often lower original price paid by the parents. The child receiving the higher or stepped-up basis through inheritance would pay lower capital gains taxes upon resale of the property.

Financing and Creditors

People sometimes place an adult with a higher FICO score on title to real property to qualify for or to receive a lower mortgage interest rate. The mechanics involve transferring full title to jointly-held property to one spouse or partner when refinancing to obtain the better loan financing opportunities available to the person with the higher credit score, or FICO.

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This causes a problem because that individual now has full legal title which makes the property susceptible to claims from that individual's creditors, or in the event of their untimely death, his or her heirs. These transactions should not take place in the absence of a will, trust or some other formal written agreement which protects the un-named individual's interest in the property.

II. POOR MAN'S PROBATE

Joint Tenancy

Joint Tenancy w/ Right of Survivorship is also known as, the "Poor Man's Probate" because it avoids probate on the death of the first spouse. The surviving spouse needs only to contact an attorney to file certain legal documents to clear title. However, the tax implications are not favorable. This form of ownership may cause you to "throw good money down the drain" because it does not utilize available tax planning opportunities to reduce potential estate taxes.

Tax Exemption

Each individual estate is exempt from taxes on assets up to \$2 Million in 2006-2008 under current

tax law due to "sunset" or expire in 2010, thereafter this amount will be reduced to \$1 Million, unless otherwise decided upon by Congress. This provides a means to minimize possible federal estate taxes currently lowered from 55% to 46% until 2008. Perhaps your estate is not valued at \$2 Million ...yet. However, that is no reason to forego any amount of tax exemption available to you because we do not know what wealth and abundance God has in store for us down the road. Compare the Federal Estate & Gift Tax liability on an estate valued at \$2.5 Million (or 2 pieces of real property in the Bay Area):

1. Basic Estate Plan \$0.00
2. Joint Tenancy- \$2M exemption \$230,000 (\$500K @ 46%)
3. Joint Tenancy- \$1M exemption \$690,000 (\$1.5 M @ 46%)

Blended Families

In a day and age when many households are lead by single-mothers and fathers and when individuals remarry after a divorce or the death of a spouse, our new unions often contain children from the current and prior relationships and are often referred to as "blended families." We must therefore approach

generational wealth building with our blended family status in mind. Holding title as 'joint tenants with right of survivorship' may result in cutting off the heirs of the deceased spouse leaving only an inheritance for the heirs of the surviving spouse. The children or heirs of prior relationships are often cut off when a joint tenant dies and there is no trust or estate plan in place.

III. LOW COST NON-PROFESSIONAL LEGAL SERVICES

Some of us engage in 'Do-It Yourself Measures' such as downloading forms from the internet and crafting legal documents. The consequences of self-help for those with no legal training can be devastating. While I believe in a good value however, I'm certain that in the seven years it takes to earn a law degree (or Juris Doctor, "JD") and thereafter pass the Bar Exam, and practice law, there is some information and expertise gained by an attorney that might escape the typical lay person. For example, improperly crafting or excluding a "no-contest clause" or not getting a Certificate of Independent Legal Review from a second attorney where gifts are bequeathed to non-traditional heirs (i.e. no biological or legal

relationship) can spoil the process. These errors may result in costly legal battles which simply deplete the heirs' inheritance. Some of us use people who are not attorneys and who do not and will not accept professional liability for the 'documents' they provide. We all are familiar with the saying, "you get what you pay for." If an individual or entity cannot or will not stand behind their work product, reliance on their work is a risk that I do not wish to take, especially on something as important as protecting my assets for the next generation.

Your legacy to future generations is a precious gift which deserves the quality, professional assistance and expertise of an attorney licensed to practice law by the State Bar. Do your part today to preserve your family's wealth and harmony. If perhaps you've completed the basic estate plan or what I like to call the "Peace of Mind Plan" for your family, then find out how you can give the gift of Generational Wealth Building to others. Contact Jeannette Fisher-Kouadio (pronounced Kwa-jo), or Madame JFK, Generational Wealth Attorney; Email: jfisher19@usa.net; (415) 859-1975.

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